Appendix

STATUTES.

World War Veterans' Act, 1924, as amended in 1935, provides (38 U.S.C. 450 (3)):

> (3) All or any part of the compensation, pension, emergency officers' retirement pay, or insurance the payment of which is suspended or withheld under this section may, in the discretion of the Administrator, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary to be used solely for the benefit of such beneficiary, or in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is an inmate nor apportioned to his dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Administrator for the benefit of such beneficiary or his dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to him if he recovers and is found competent, or, if a minor, attains majority, or otherwise to his guardian, curator, or conservator, or, in the event of his death, to his personal representative, except as otherwise provided by law: PROVIDED, That payment will not be made to his personal representative if, under the law of the State of his last legal residence, his estate would escheat to the State: PROVIDED FURTHER, That any funds in

the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under this title, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance, or pension. (As amended Aug. 12, 1935, c. 510, §1, 49 Stat. 607.)

California Probate Code (Deering's 1941 edition) provides, in pertinent part:

231. ESCHEAT: PROCEDURE. If the decedent leaves no one to take his estate or any portion thereof, under the laws of this state, the same escheats to the state as of the date of the death of the decedent. The property or proceeds of any estate deposited in the state treasury after final decree of distribution or judgment of the Superior Court by reason of the failure of heirs to make claim thereto may be recovered upon judgment of the Superior Court or order of the State Board of Control as provided in the Code of Civil Procedure. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. There-

upon the property must be delivered, or the proceeds paid, to the claimant upon filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and must be placed by the state treasurer to the credit of the school fund. Property passing to the state under this section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of the Code of Civil Procedure relating to escheated estates.

1020. FINAL DISTRIBUTION: PROCEDURE. Immediately upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, devisee, or legatee, or his assignee, grantee or successor in interest, and after notice given for the period and in the manner required by section 1200 of this code, the court must proceed to distribute the residue of the estate among the persons entitled thereto. Any person interested in the estate or any coexecutor or coadministrator may resist the application.

1027. TIME FOR APPLICATION: DISTRIBUTION TO STATE: VESTING OF TITLE: DELIVERY BY PERSONAL REPRESENTATIVES: TRANSFERS BY COUNTY TREASURER: TIME TO FILE CLAIM. Executors or administrators, public or otherwise, must apply for distribution of an estate at the time of filing a final account. Notice of such application must be given in the manner provided in section 1200

of the Probate Code. If the court, at the time set for hearing of the final account, or such time thereafter to which the matter may be continued, does not distribute the entire balance of the estate remaining for distribution to known heirs, devisees, or legatees entitled to succeed thereto, it must distribute to the State of California that portion of such estate not distributed to known heirs, devisees, or legatees.

Due service and receipt of a copy of the within is hereby admitted

this.....day of February, 1945.

.....

United States Attorney,

.....

Solicitor General of the United States,

Attorneys for Respondent.

In the Supreme Court

OF THE

United States

Office - Supreme Court, U. S.
FILED
MAR 30 1945
CHARLES ELMORE CROPLEY
CLERK

(24)

OCTOBER TERM, 1944

No. 1093

In the Matter of the Estate of
PATRICK WALKER,
also known as Patrick J. Walker,
Deceased.

STATE OF CALIFORNIA,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the State of California and BRIEF IN SUPPORT THEREOF.

ROBERT W. KENNY,
Attorney General of the State of California,
CLARENCE A. LINN,
Deputy Attorney General of the State of California,
600 State Building, San Francisco 2, California,
Attorneys for Petitioner.

PERMAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	3
Reasons for the Exercise of the Discretion of the Court and for the issuance of the writ of certiorari	3
Summary statement of the matters involved	4
Assignment of Errors	8
Summary of the Argument	8
Argument	9
I.	
The assets of the estate of the deceased were at the time of his death vested in him absolutely	9
II.	
The money having been paid to the deceased without reservation, the United States can no longer assert control over it	10
III.	
A state, as distinguished from the United States, has under the powers reserved to the states by the tenth amendment sole and exclusive power and jurisdiction over the disposition of the property of its residents	11
IV.	
A consideration of the principal decisions relied on by the Supreme Court of California	14
Conclusion	19

Table of Authorities Cited

Cases

	Pages
Abbott v. Morgenthau, 93 Fed. (2d) 242	15
American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775	13
Beaver v. Short, 300 Fed. 113	11, 13, 16, 17
Carrier v. Bryant, 306 U. S. 545, 83 L. Ed. 976	9
Doe v. Redfern, 12 East 96, 16 Vin. Ab. 86, pl. 1	12
Etheridge v. Doe, 18 Ala. 565	14, 17
Hamilton v. Brown, 161 U. S. 256	11
Kellogg v. Waite, 12 Allen 529	10
Peo. v. Richardson, 269 Ill. 275, 109 N. E. 1033	13
Spicer v. Smith, 288 U. S. 430, 77 L. Ed. 875	9
State, ex rel. Smith v. Board of Commissioners, 294 Pac. 915 (certiorari denied, 283 U. S. 855)	9, 10
Sunderland v. United States, 266 U. S. 226	11
Tax Commission of Ohio v. Rife, 119 Ohio State 83, 162 N. E. 390	14, 15
U. S. Fidelity & Guaranty Co. v. Montgomery, 146 So. 528	9
United States v. Fox, 94 U. S. 315	11
United States v. Klein, 303 U. S. 276	13
United States v. Perkins, 163 U. S. 625	11
United States v. Repentigny, 72 U. S. 211	12
United States v. Stevens, 302 U. S. 623, 82 L. Ed. 484	17, 18

Codes and Statutes

Judicial Code, Section 237(b)	3
Probate Code of California, Sections 231, 1020, 1027	4, 7
49 Stat. 607, 38 U. S. C., Section 450, sub. 3	3
24 U. S. C. 136	18
28 U. S. C., Section 344(b)	3
38 U. S. C., Section 450	7, 8
United States Constitution, Tenth Amendment	3

Texts

29 Harvard Law Review, 455	13

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

In the Matter of the Estate of
PATRICK WALKER,
also known as Patrick J. Walker,
Deceased.

STATE OF CALIFORNIA,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California
and
BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, the State of California, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above case on December 30, 1944 (R. p. 40) and which became final on January 30, 1944. (R. p. 63.)

OPINIONS BELOW.

The opinion of the Supreme Court of California complained of is reported in 25 Advance California Reports, at pages 714 to 715, inclusive, 154 Pac. (2d) 891, and appears in the record at page 74. This opinion adopts the opinion of the California Supreme Court in the *Estate of Lindquist* which is reported in 25 Advance California Reports, at pages 693 to 713, inclusive, 154 Pac. (2d) 879, and appears in the record at page 53, and in which case the State of California has also petitioned for certiorari.

The opinion of the trial Court was not reported but may be found in the record at page 41.

JURISDICTION.

The judgment of the Supreme Court of California was entered on December 30, 1944 (R. p. 74), and became final on January 30, 1944. (R. p. 76.) The

jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925 and the Act of January 31, 1928. (28 U.S.C. section 344(b).)

STATUTES INVOLVED.

The case involves a conflict between the escheat statute of the State of California, *Probate Code of California,* Sections 231, 1020 and 1027, printed in the appendix to this petition at pages ii-iv, and the escheat provisions contained in the *World War Veterans' Act,* 1924, as amended in 1935 (49 Stat. 607; 38 U.S.C. Section 450, sub. 3), printed in the appendix to this petition at pages i-ii.

The Tenth Amendment to the Constitution of the United States was relied upon by petitioner as prohibiting the enactment of a federal escheat law.

REASONS FOR THE EXERCISE OF THE DISCRETION OF THE COURT AND FOR THE ISSUANCE OF THE WRIT OF CERTIORARI.

Petitioner asserts that there are special and important reasons which should compel this Court, in the exercise of a sound judicial discretion, to issue a writ of certiorari—and that the compelling reasons are:

(1) The Supreme Court of California has decided a federal question, namely, that the Congress may pass an escheat statute (49 Stat. 607, 38 U.S.C. Sec-

tion 450, sub. 3) which will control the distribution of the estate of a deceased person, the statutes of the state (Sections 231, 1020 and 1027, Probate Code of California) to the contrary notwithstanding;

(2) The said decision of the California Court is not in accord with applicable decisions of this Court; and

(3) Certiorari is requested in order that a settlement of an important question of public law may be had. This is a case of first impression in the United States. No Court, other than the Supreme Court of California in the decision here complained of, has construed the statutes involved. A case identical in all essential details is now pending before the Supreme Judicial Court of the Commonwealth of Massachusetts. (*Estate of John Konon, Deceased.*)

We are advised by the Veterans' Administration that similar cases are pending in a number of other jurisdictions, but none of these cases has been decided by an appellate tribunal.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

Patrick J. Walker, an incompetent veteran of the United States Army, died intestate and without known heirs, December 11, 1940. At the time of his death he was a resident of the City of San Diego, San Diego County, State of California, and on January 3, 1941, letters of administration of his estate were issued to Chester D. Gunn, Public Administrator of San Diego County, California.

On October 7, 1938, the deceased had been declared incompetent and Jennie E. Rodriguez had been appointed guardian of his estate. The Veterans' Administration on June 27, 1899, made an award of pension in favor of the veteran. The amount so ordered was regularly paid to the said veteran personally until he was declared incompetent and thereafter was paid to his guardian, Jennie E. Rodriguez, until the death of said veteran on December 11, 1940. It is admitted and the Court so found that all of the funds now in the hands of the administrator herein represent the unexpended balance of said pension compensation.

On January 10, 1941, the guardian paid the unexpended balance found due upon her final accounting to the administrator of the deceased veteran's estate. All of the funds so paid over consisted entirely of the unexpended balance of funds derived from the pension money received from the Veterans' Administration and the residue of the estate now remaining for distribution consists entirely and solely of the balance of such funds received by the administrator from the guardian and are all derived from pension moneys.

The Public Administrator filed his petition for settlement of final account and for final distribution on October 26, 1942. He prayed that a decree be made "distributing the remaining assets of said estate, less costs of closing, to the persons entitled thereto". (R. p. 16.)

Thereafter, on November 27, 1942, the United States filed in said Court a petition for distribution to the

United States of America of the net value of said estate and asked the Court to enter its order and decree distributing the net estate remaining in the hands of the administrator and available for distribution to the United States as the sole heir entitled to said estate, upon the ground that the deceased did not leave surviving him any person capable of succeeding to the estate herein under the laws of the State of California, and that the petitioner, United States of America, claims the entire net estate pursuant to Title 38 of U. S. Code, Section 450(3), which provides:

> "Provided further, That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said acts, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance or pension."

And also on November 27, 1942, the State of California filed a claim with the Administrator asking the said estate, less lawful costs and fees, be distributed

to the State of California as property passing to it by escheat, pursuant to the provisions of Section 1027 of the Probate Code, State of California.

Thereafter on January 15, 1943, Judge L. N. Turrentine, herein rendered memorandum decision to the effect that said estate escheated to the State of California for the reason that delivery was complete and unequivocal, and the right to future control by the United States Government after said complete and unequivocal delivery, attempted to be exercised by statute, is void. (R. p. 41.)

On January 29, 1943, the Superior Court made and entered an order and decree settling the first and final account and decree of distribution. It found that the decedent died intestate without heirs or next of kin to share the estate; that the residue of the estate consists entirely of money received from the award of pension by the Veterans' Administration; that the State of California is entitled to distribution of the residue as escheated property by reason of the absence of heirs, legatees or devisees. It was therefore ordered by Judge Turrentine that the residue of the estate, consisting entirely of cash, be distributed to the State of California pursuant to the provisions of Section 1027 of the Probate Code of the State of California, and that the claim of the United States for distribution under the provisions of Title 38 U. S. C., Section 450(3), be denied. (R. p. 43.)

ASSIGNMENT OF ERRORS.

The Supreme Court of California erred:

1. In holding that the federal statute (Section 450, 38 U.S.C.) providing for an escheat to the United States was constitutional;

2. In holding that a veteran is bound by contract, in the absence of heirs, to return to the federal government upon his death all unused portions of his pension money;

3. In holding that Subdivision 3 of Section 450, U.S.C., is a statutory contract rather than an escheat statute.

SUMMARY OF THE ARGUMENT.

I.

The assets of the estate of the deceased were at the time of his death vested in him absolutely.

II.

The money having been paid to the deceased without reservation, the United States can no longer assert control over it.

III.

A state, as distinguished from the United States, has, under the powers reserved to the states by the Tenth Amendment, sole and exclusive power and jurisdiction over the disposition of the property of its residents.

IV.

A consideration of the principal decisions relied on by the Supreme Court of California.

ARGUMENT.

I.

THE ASSETS OF THE ESTATE OF THE DECEASED WERE AT THE TIME OF HIS DEATH VESTED IN HIM ABSOLUTELY.

It has been held by the Supreme Court of the United States and by the Courts of several states that when money is paid to a veteran pursuant to a pension, title vests in the recipient and the United States has no right or interest in said money.

Spicer v. Smith, 288 U.S. 430, 77 L. Ed. 875;
Carrier v. Bryant, 306 U.S. 545, 83 L. Ed. 976;
U. S. Fidelity & Guaranty Co. v. Montgomery, 146 So. 528;
State, ex rel. Smith v. Board of Commissioners, 294 Pac. 915 (certiorari denied, 283 U.S. 855).

In *Spicer v. Smith,* supra, the Supreme Court of the United States speaking through Mr. Justice Butler stated that the very escheat provision of the federal statute was evidence that title to the money had passed to the veteran.

The fact that the money was paid to a guardian does not alter the situation. The intervention of a guardian does not leave the pension funds in the hands of the government but, when paid to the guard-

ian, the title and possession have both passed from the government.

State, ex rel. Smith v. Board of Commissioners, 294 Pac. 915 (certiorari denied, 283 U.S. 855).

II.

THE MONEY HAVING BEEN PAID TO THE DECEASED WITHOUT RESERVATION, THE UNITED STATES CAN NO LONGER ASSERT CONTROL OVER IT.

This rule is best expressed by Judge Ebenezer R. Hoar, of the Supreme Judicial Court of Massachusetts, in the case of

Kellogg v. Waite, 12 Allen 529.

The pertinent portion of this decision reads as follows:

> "It is undoubtedly competent for the United States to attach such conditions as they may see fit to the grant of a pension, and to fix by law the time and manner in which the property shall finally pass to the pensioner. But when this money was paid to the agent of the principal defendant, by her consent, and in conformity with the existing provisions of law, *it became her property,* and created a debt from the agent to her, *over which the United States government had no longer any control or jurisdiction.* It was no longer, in the language of the statute of 1866, 'a sum of money due or to become due to any pensioner under the laws of the United States.' It had been paid, and was received by her in the manner she had chosen. *It could not be recalled*

by the government, nor could its disposal be qualified or in any manner limited or abridged." (Emphasis supplied.)

The pension money in the estate of the deceased had been his money. He had both title and possession and the money itself was within the jurisdiction of the California Courts and subject to its statutes.

III.

A STATE, AS DISTINGUISHED FROM THE UNITED STATES, HAS UNDER THE POWERS RESERVED TO THE STATES BY THE TENTH AMENDMENT SOLE AND EXCLUSIVE POWER AND JURISDICTION OVER THE DISPOSITION OF THE PROPERTY OF ITS RESIDENTS.

There are many authorities to the effect that the State has the sole and exclusive power over the disposition of property under its jurisdiction.

United States v. Fox, 94 U.S. 315;
Sunderland v. United States, 266 U.S. 226;
United States v. Perkins, 163 U.S. 625;
Beaver v. Short, 300 Fed. 113.

In the case of

Hamilton v. Brown, 161 U.S. 256,

the Supreme Court of the United States lays down the rule as follows (at p. 263):

"By the law of England, before the Declaration of Independence, the lands of a man dying intestate and without lawful heirs reverted by escheat to the King as the sovereign lord; but the King's title was not complete without an actual

entry upon the land, or judicial proceedings to ascertain the want of heirs and devisees. *Attorney General of Ontario v. Mercer,* 8 App. Cas. 767, 772, 2 Bl. Com. 245. The usual form of proceeding for this purpose was by an inquisition or inquest of office before a jury, which was had upon a commission out of the Court of Chancery, but was really a proceeding at common law; and, if it resulted in favor of the King, then, by virtue of ancient statutes, any one claiming title in the lands might, by leave of that court, file a traverse, in the nature of a plea or defence to the King's claim, and not in the nature of an original suit. Lord Somers, in *The Bankers' Case,* 14 Howell's State Trials, 1, 83; *Ex parte Webster,* 6 Ves. 809; *Ex parte Gwydir,* 4 Maddock, 281; *In re Parry,* L. R. 2 Eq. 95; *People v. Cutting,* 3 Johns. 1; *Briggs v. Light-Boats,* 11 Allen, 157, 172. The inquest of office was a proceeding *in rem;* when there was a proper office found for the King, that was notice to all persons who had claims to come in and assert them; and, until so traversed, it was conclusive in the King's favor. Bayley, J., in *Doe v. Redfern,* 12 East, 96, 103; 16 Vin. Ab. 86, pl. 1.

In this country, when the title to land fails for want of heirs and devisees, *it escheats to the State* as part of its common ownership, either by mere operation of law, or upon an inquest of office, *according to the law of the particular State.* 4 Kent Com. 424; 3 Wash. Real Prop. (4th Ed.) 47, 48." (Emphasis supplied.)

See also,

United States v. Repentigny, 72 U. S. 211.

Even money deposited in the United States Treasury when an escheat occurs escheats to the State where it was originally situated.

United States v. Klein, 303 U. S. 276;
American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775.

Statutes providing for escheat have been held to be part of the intestate laws of a state.

Peo. v. Richardson, 269 Ill. 275, 109 N.E. 1033;
29 *Harvard Law Review*, 455.

This being the case it is all the more evident that there can be no federal escheat statute. Laws governing the devolution of property have always been the subject of exclusive state jurisdiction.

There is only one exception to the rule that a state has exclusive control over the devolution of title to property located within its jurisdiction. This exception tends to prove the general rule. The exception is in the case of the property of *restricted* Indians whose property is held in trust for them by the government. In the case of such property the courts have held that:

> "Restricted Indian lands do not become subject to the operation of the laws of the state until all restrictions from the right of the allottee to alienate have been removed and relinquished by the Congress."

Beaver v. Short, 300 Fed. 113.

In the instant case, the veteran is not to be treated as a restricted Indian. There are no restrictions on his right to alienate his property and the government does not hold it in trust for him.

The fact that the money in the estate was derived from the United States does not change the general rule, i.e., that the state escheat statutes control property situated within the state.

Etheridge v. Doe, 18 Ala. 565.

By the Tenth Amendment to the Constitution of the United States all powers not delegated to the United States nor prohibited to the States are reserved to the States. By this reservation the rights of sovereignty are guaranteed to the States by the Constitution. No act of Congress can subtract an attribute of sovereignty from a State. Citation of authority is not necessary to demonstrate that probate jurisdiction over the property of a resident situated within a state has always been exercised by the states as an attribute of the sovereign.

IV.

A CONSIDERATION OF THE PRINCIPAL DECISIONS RELIED ON BY THE SUPREME COURT OF CALIFORNIA.

In support of its conclusion that the federal escheat statute will prevail over the state escheat statute, the Supreme Court of California relies in part on the case of *Tax Commission of Ohio v. Rife,* 119 Ohio State 83,

162 N. E. 390. This case involved the proceeds of a war risk insurance policy. Under the law and the contract, payments under the contract of insurance were not subject to inheritance taxes. The Court held that the beneficiaries named in the policy took under the contract and not by reason of the statutes of descent and distribution, and therefore the inheritance tax did not attach. In the instant case, however, the State of California is taking under its statutes of distribution and the United States is attempting to take the funds involved not by reason of any contractual relationship between the deceased and the government, or by virtue of any trust impressed upon the money, but by virtue of a statute of distribution which the Congress was powerless to enact. The Ohio case points this out in the following language:

> "This right to take this property is by virtue of a contract between the United States government and the soldier, and does not arise by a reason of the statutes of descent and distribution of this state, even though the government has seen fit to distribute such fund through the agency of an administrator acting under the statutes of descent and distribution of the State of Ohio."
>
> *Tax Commission of Ohio v. Rife,* supra.

Reliance is also placed upon the case of *Abbott v. Morgenthau,* 93 Fed. (2d) 242 (certiorari denied 303 U. S. 638). This is another case involving a contract between the government and the veteran. The veteran entered a soldiers' home. Upon entering the home

the veteran agreed that " 'The balance due the pensioner at the date of his death shall be disposed of as directed by Act of Congress approved July 1, 1902.' " The statute was amended in 1910. The Court held that the 1910 amendment did not affect the contract and that as the claimant was not entitled to take under the 1902 statute, the balance of the pension money on deposit with the home should be paid into the federal treasury in accordance with the 1902 statute and the contract. There is *dicta* in the cited case to the effect that there is "no vested legal right to a pension at all, for, as has been said time and time again, pensions are bounties which Congress has the right to give, to withhold, to distribute, or to recall, at its discretion". We are not in conflict with this *dicta*. "To recall" a pension means to repeal the act so that the pension does not continue. We know of no case in which, in the absence of fraud, an attempt is made to recover title to pension money once the pensioner has taken title and possession of the same.

The statute relied on by appellant in the instant case does not attempt to distribute or recall the pension. What it does is to attempt to engraft an escheat statute on the substantive law of the State of California contrary to the state law and in violation of the Tenth Amendment to the Constitution.

Beaver v. Short, 300 Fed. 113, is likewise relied upon by the Supreme Court of California. This case provides the only exception to the rule that a state has exclusive control of the devolution of title to property

located within its jurisdiction. This exception tends to prove the general rule. The cited case concerned the property of *restricted* Indians whose property was held *in trust* for them by the government. In case of such property the Court held that:

> "Restricted Indian lands do not become subject to the operation of the laws of the state until all restrictions from the right of the allottee to alienate have been removed and relinquished by the Congress."
>
> *Beaver v. Short,* supra.

In the instant case the veteran is not to be treated as a restricted Indian. The Congress has impressed no restrictions on his right to alienate his pension award and the government does not hold the same in trust for him. He can do as he pleases with the money—spend it, give it away, or throw it away.

The fact that the money in the estate was derived from the United States does not change the general rule, i.e., that the state escheat statutes control property situated within the state.

Etheridge v. Doe, 18 Ala. 565.

The Supreme Court of California, however, relies principally on the case of *United States v. Stevens,* 302 U. S. 623, 82 L. Ed. 484.

The cited case is analogous to the case at bar. The rationale of the decision supports the position of the respondents in this case. In the *Stevens* case the veteran died an inmate of a federal veterans' home.

By statute (24 U.S.C. 136) and as a prerequisite to admission to the home, inmates were required to turn over to the home all property which the inmate did not dispose of by will, and upon death the property was to vest in the board of managers of the home. The inmates were required to execute a written contract which embodied the statutory requirements. In the *Stevens* case such a contract was executed. Upon the death of a veteran inmate, the United States *sued* his administratrix for the proceeds of the estate. The Circuit Court of Appeals (89 Fed. (2d) 151) held that the statute and contract were in violation of the Tenth Amendment to the Constitution as an interference with the reserved rights of the state.

The Supreme Court in reversing the Circuit Court of Appeals stated:

> "This contract, however, is valid under the applicable state law * * *
>
> "During the life of the veteran, his property was his own to dispose of as he desired; * * *
>
> "In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, *consistently with state law,* can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members." (Emphasis supplied.)
>
> *U. S. v. Stevens,* supra.

The decision just cited is based upon the proposition that the veteran's property is his own, to be dealt with as he sees fit. If he chooses to become an inmate of a veterans' home, he does so by contract and the home succeeds to the veteran's property by virtue of a contract with the veteran made and enforced in accordance with the laws of the state.

CONCLUSION.

All of the important cases relied upon by the Supreme Court of California in arriving at its determination are cases based upon contracts between the veteran and the government, either insurance contracts or domiciliary contracts. In each of these cases the government took, not by virtue of an escheat law, but by reason of a contract with the veteran.

In the instant case the government attempts to take under an escheat statute. If the government is entitled to the money in question under a contract, it would have established its right in a plenary action by the filing of a claim and the institution of a suit. However, recognizing that its right is not based upon contract, it appeared in the probate proceeding and asked for distribution of the estate under the federal escheat law hereinbefore referred to.

The federal government should not prevail because escheat statutes are part of the laws providing for the devolution of title to property located within the juris-

diction of a state. Such laws are part of the sovereig
powers of a state, reserved to the state under the Ten
Amendment to the Constitution.

The writ of certiorari should be granted by th
Court to the end that a correct decision on this i
portant federal question may be had.

Dated, San Francisco, California,
March 2, 1945.

Respectfully submitted,

ROBERT W. KENNY,
Attorney General of the State of Californi

CLARENCE A. LINN,
Deputy Attorney General of the State of Californi

Attorneys for Petition

(Appendix Follows.)

Appendix

STATUTES.

World War Veterans' Act, 1924, as amended in 1935, provides (38 U.S.C. 450 (3)):

> (3) All or any part of the compensation, pension, emergency officers' retirement pay, or insurance the payment of which is suspended or withheld under this section may, in the discretion of the Administrator, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary to be used solely for the benefit of such beneficiary, or in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is an inmate nor apportioned to his dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Administrator for the benefit of such beneficiary or his dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to him if he recovers and is found competent, or, if a minor, attains majority, or otherwise to his guardian, curator, or conservator, or, in the event of his death, to his personal representative, except as otherwise provided by law: PROVIDED, That payment will not be made to his personal representative if, under the law of the State of his last legal residence, his estate would escheat to the State: PROVIDED FURTHER, That any funds in

the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under this title, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance, or pension. (As amended Aug. 12, 1935, c. 510, §1, 49 Stat. 607.)

California Probate Code (Deering's 1941 edition) provides, in pertinent part:

231. ESCHEAT: PROCEDURE. If the decedent leaves no one to take his estate or any portion thereof, under the laws of this state, the same escheats to the state as of the date of the death of the decedent. The property or proceeds of any estate deposited in the state treasury after final decree of distribution or judgment of the Superior Court by reason of the failure of heirs to make claim thereto may be recovered upon judgment of the Superior Court or order of the State Board of Control as provided in the Code of Civil Procedure. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. There-

upon the property must be delivered, or the proceeds paid, to the claimant upon filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and must be placed by the state treasurer to the credit of the school fund. Property passing to the state under this section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of the Code of Civil Procedure relating to escheated estates.

1020. FINAL DISTRIBUTION: PROCEDURE. Immediately upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, devisee, or legatee, or his assignee, grantee or successor in interest, and after notice given for the period and in the manner required by section 1200 of this code, the court must proceed to distribute the residue of the estate among the persons entitled thereto. Any person interested in the estate or any coexecutor or coadministrator may resist the application.

1027. TIME FOR APPLICATION: DISTRIBUTION TO STATE: VESTING OF TITLE: DELIVERY BY PERSONAL REPRESENTATIVES: TRANSFERS BY COUNTY TREASURER: TIME TO FILE CLAIM. Executors or administrators, public or otherwise, must apply for distribution of an estate at the time of filing a final account. Notice of such application must be given in the manner provided in section 1200